

§ 9701.526 Continuation of existing laws, recognitions, agreements, and procedures.

(a) Except as otherwise provided by § 9701.506, nothing contained in this subpart precludes the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or an agreement that is otherwise consistent with law and the regulations in this part between the Department or a component thereof and an exclusive representative of its employees, which is entered into before the effective date of this subpart, as determined under § 9701.102(b).

(b) Policies, regulations, and procedures established under, and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838 or any other Executive order, as in effect on the effective date of this subpart (as determined under § 9701.102(b)), will remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this subpart or by implementing directives or decisions issued pursuant to this subpart.

§ 9701.527 Savings provision.

This subpart does not apply to grievances or other administrative proceedings already pending on the date of coverage of this subpart, as determined under § 9701.102(b). Any remedy that applies after the date of coverage under any provision of this part and that is in conflict with applicable provisions of this part is not enforceable.

Subpart F—Adverse Actions**GENERAL****§ 9701.601 Purpose.**

This subpart contains regulations prescribing the requirements when employees are furloughed for 30 days or less, suspended, demoted, reduced in pay, or removed. DHS may issue implementing directives to carry out the provisions of this subpart.

§ 9701.602 Waivers.

When a specified category of employees is covered by the adverse action provisions established under this subpart, 5 U.S.C. 7501 through 7514 and 7531

through 7533 are waived with respect to that category of employees. The provisions in 5 U.S.C. 7521 and 7541 through 7543 are not waived.

§ 9701.603 Definitions.

In this subpart:

Adverse action means a furlough for 30 days or less, a suspension, a demotion, a reduction in pay, or a removal.

Band means a work level or pay range within an occupational cluster.

Competencies means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position.

Current continuous service means a period of service immediately preceding an adverse action in the same or similar positions without any break in Federal civilian employment.

Day means a calendar day.

Demotion means a reduction in grade, a reduction to a lower band within the same occupational cluster, or a reduction to a lower band in a different occupational cluster under rules prescribed by DHS pursuant to § 9701.355.

Furlough means the placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Grade means a level of work under a position classification or job grading system.

Indefinite suspension means the placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Department action. An indefinite suspension continues for an indeterminate period of time and usually ends with either the employee returning to duty or the completion of any subsequent administrative action.

Initial service period (ISP) means the 1 to 2 years employees must serve after selection (on or after the date this subpart becomes applicable, as determined under § 9701.102(b)) for a designated DHS position in the competitive service for the purpose of providing an employee the opportunity to demonstrate competencies in a specific occupation.

Mandatory removal offense (MRO) means an offense that the Secretary determines, in his or her sole, exclusive, and unreviewable discretion, has a

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direct and substantial adverse impact on the Department's homeland security mission.

Mandatory Removal Panel (MRP) means the three-person panel composed of officials appointed by the Secretary for fixed terms to decide appeals of removals based on a mandatory removal offense.

Pay means the rate of basic pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind. For the purpose of this subpart, pay does not include locality-based comparability payments under 5 U.S.C. 5304, locality or special rate supplements under subpart C of this part, or other similar payments.

Probationary period has the meaning given that term in 5 CFR 315.801.

Removal means the involuntary separation of an employee from the Department.

Similar positions means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbent could be moved from one position to another without significant training or undue interruption to the work.

Suspension means the temporary placement of an employee, for disciplinary reasons, in a nonduty/nonpay status.

Trial period has the meaning given that term in 5 CFR 316.304.

§ 9701.604 Coverage.

(a) *Actions covered.* This subpart covers furloughs of 30 days or less, suspensions, demotions, reductions in pay (including reductions in pay within a band), and removals.

(b) *Actions excluded.* This subpart does not cover—

(1) Any adverse action taken against an employee during a probationary, trial, or initial service period, except for an adverse action taken against a preference eligible employee in the competitive service who has completed the first year of an initial service period;

(2) The demotion of a supervisor or manager under 5 U.S.C. 3321;

(3) An action that terminates a temporary or term promotion and returns

the employee to the position from which temporarily promoted, or to a different position of equivalent band and pay, if the employee was informed that the promotion was to be of limited duration;

(4) A reduction-in-force action under 5 U.S.C. 3502;

(5) An action under 5 U.S.C. 1215;

(6) An action against an administrative law judge under 5 U.S.C. 7521;

(7) A voluntary action by an employee;

(8) An action taken or directed by OPM based on suitability under 5 CFR part 731;

(9) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(10) Cancellation of a promotion to a position not classified prior to the promotion;

(11) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(12) Reduction of an employee's rate of basic pay from a rate that is contrary to law or regulation;

(13) An action taken under a provision of statute, other than one codified in title 5, U.S. Code, which excludes the action from 5 U.S.C. chapter 75 or this subpart;

(14) A classification determination, including a classification determination under subpart B of this part; and

(15) An action that entitles an employee to grade retention under 5 CFR part 536 and an action to terminate this entitlement.

(c) *Employees covered.* Subject to a determination by the Secretary or designee under § 9701.102(b), this subpart applies to DHS employees, except as excluded by paragraph (d) of this section.

(d) *Employees excluded.* This subpart does not apply to—

(1) An employee in the competitive service who is serving a probationary, trial, or initial service period, except for a preference eligible employee in the competitive service who has completed the first year of an initial service period;